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1           STATE OF INDIANA  
2           BEFORE THE  
3           ALCOHOL AND TOBACCO COMMISSION  
4  
5       IN THE MATTER OF:       )  
6                                )  
7       SOUTHERN WINE & SPIRITS OF )  
8       INDIANA, INC.            ) PERMIT NO.  
9       121 HAUSFELDT LANE       ) w 22-25148 & w 22-25149  
10       NEW ALBANY, IN 47150-2264 )  
11                                )  
12       PERMIT APPLICANT       )

13  
14                       \* \* \* \* \*  
15  
16       TRANSCRIPT FROM ALCOHOL AND  
17       TOBACCO COMMISSION HEARING  
18       NOVEMBER 3, 2009, 10:00 a.m.  
19       INDIANAPOLIS, INDIANA

20                       \* \* \* \* \*  
21  
22       Council Members Present:

23           P. Thomas Snow, Chairman  
24           Frank Guthrie  
25           Dale Sturtz  
26           David Johnson

27       Present for Southern     Present for National Wine &  
28       Wine & Spirits of       Spirits:  
29       Indiana, Inc.:  
30       Byron E. Leet, Esq.     Steven M. Badger, Esq.  
31       WYATT, TARRANT & COMBS   BOSE McKINNEY & EVANS  
32       500 W. Jefferson St.     111 Monument Cir, Ste. 2700  
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34  
35  
36       TAMARA S. DUVALL, CCR, RPR  
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1 MR. SNOW: Regarding W 22-25148 and  
2 W 22-25149, Southern Wine Spirits of Indiana. This  
3 matter is set today, public forum, pursuant to Indiana  
4 Code 7-1-3-23-33 I believe, that is correct. We did  
5 send -- the Commission did send out pursuant to the  
6 statutory framework on September 23, 2009, a notice of  
7 proposed action. Today is the day according to the  
8 statutory framework wherein Southern would have the  
9 opportunity to make its record regarding our notice of  
10 proposed action.

11 For record purposes I do note the receipt and  
12 review of Southern's summary of evidence in support of  
13 Southern Wines and Liquor's wholesaler permit, which  
14 consists of 18 pages of memorandum and then a huge  
15 Exhibit A, which I have carefully reviewed, and  
16 re-reviewed, and re-re-reviewed. Also that document  
17 has been sent -- I think I was the only commissioner  
18 here Friday. I know that our executive secretary  
19 provided copies to our commissioners, who I trust have  
20 had an opportunity to review that same document.

21 Also for record purposes I do note that  
22 yesterday, November 2, 2009, National Wine and Spirits  
23 filed a written statement regarding today's hearing,  
24 November 3, 2009, public hearing, which I did review  
25 yesterday evening and took another look at yet again

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1 this morning before actually coming to work. I know  
2 my commissioners -- I know my commissioners have  
3 received a copy of this, because you good people were  
4 in and out of the office I know yesterday, and I think  
5 Mr. Dunsmore -- Ed, did you give each commissioner a  
6 copy of National's?

7 MR. DUNSMORE: I did.

8 MR. SNOW: Very well, so we know that's been  
9 distributed. So pursuant to the statutory scheme it's  
10 Southern's opportunity to present evidence. You may  
11 rest assured, Southern, that we've looked at your  
12 written submission. That should not foreclose you in  
13 any way from going forward, presenting what you want  
14 us to know either by way of summary of your written  
15 submission, if you have other matters to present, I  
16 want you -- the same rule applies today that did when  
17 we had our last hearing, I want everybody to be as  
18 comfortable as humanly possible.

19 We want to make a reasoned and proper ruling  
20 and with that we need all the information we can get.  
21 There will be no final vote on this today. After  
22 Southern is finished with their presentation I will  
23 allow some public comment, and I'll be firm but fair  
24 on the length of that. Because it is no secret that  
25 this matter has received the closest possible scrutiny

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1 I can imagine. I've only been here seven months, but  
2 if a commission has ever looked at any case more  
3 thoroughly I would be shocked. And that's the way I  
4 want to do things. Though I will have public comment,  
5 but I will hold it to something within reason, because  
6 this is, after all, the statutory framework,  
7 Southern's opportunity to come in and talk to us about  
8 our proposed action.

9       There will be a final vote on this. I think  
10 final action by my view should be done in a public  
11 forum. And I think we're working, Mr. Dunsmore, on  
12 setting a special meeting.

13       MR. DUNSMORE: Tentatively set for 2 p.m.,  
14 Thursday, November 5th.

15       MR. SNOW: Say again

16       MR. DUNSMORE: 2 p.m. this Thursday, November  
17 5th.

18       MR. SNOW: That will be a hearing, a public  
19 hearing, and it will basically -- there will be no  
20 public comment, it will be our vote and maybe some  
21 discussion as to how we're getting what we're getting.  
22 So thank you for doing that so quickly, Ed, that's  
23 amazing, very good.

24       That having been said, Southern may go  
25 forward. When you come up be sure to identify

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1 yourself for record purposes and I'll give you the  
2 time you need.

3 MR. LEET: Good morning, sir.

4 MR. SNOW: Good morning.

5 MR. LEET: My name is Byron Leet, I'm with  
6 the law firm of Wyatt, Tarrant and Combs. And along  
7 with my partners, Rick Northern and Rebecca Bennett  
8 Howard, we represent Southern Wine and Spirits,  
9 Southern Wine and Spirits of Indiana.

10 I want to begin initially by thanking the  
11 Commission for the opportunity to be heard here today.  
12 We certainly appreciate, Mr. Chairman, that this  
13 matter has received a tremendous amount of attention,  
14 and that is to say a tremendous amount of your time.  
15 And I can assure the Commission I have no intention of  
16 reading to you that substantial submission that's in  
17 front of you. I know that all of the Commission  
18 members have read it and have taken this entire matter  
19 seriously. I only want to sort of hit the high spots  
20 if you will.

21 But before I do that I would like to make a  
22 couple of introductions. We have with us today Mr.  
23 Steven Becker, who is Executive Vice President of  
24 Southern Wine and Spirits of Indiana, and also Mr. Jim  
25 Webster, who is an attorney in Illinois who has

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1 handled regulatory matters.

2 As the chairman indicated we're here today  
3 because on September 23rd the Commission proposed in  
4 writing to deny the wine and liquor wholesale permits  
5 that Southern has applied for, permits that Southern  
6 applied for in July of 2008. The submission that we  
7 received suggested, if I can break them down into  
8 categories, that there are three primary concerns that  
9 the Commission had.

10 First, the Commission had concerns with the  
11 proposed joint venture that Southern was proposing to  
12 enter into with Glazer's. Second, generally speaking  
13 the Commission expressed concerns with issues that  
14 have arisen in other states in which Southern does  
15 business. And third, the Commission expressed some  
16 concern with Southern's failure to disclose  
17 prohibitive interests to this Commission in connection  
18 with these permit applications.

19 Taking them in that order first, the Glazer's  
20 joint venture. It is a fair statement that that issue  
21 has received a lot of attention over the course of the  
22 last months and it has been subject to much discussion  
23 by Southern's competitors, who have come before the  
24 Commission with lengthy submissions trumpeting the  
25 great horrors that will ensue if Southern and Glazer's

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1 enter into this joint venture.

2 Well, this is an easy issue for this  
3 Commission, because there is no joint venture between  
4 Southern and Glazer's. Those talks have been called  
5 off and there is no intention whatsoever to pursue  
6 this joint venture with Glazer's. Mr. Becker can  
7 discuss that issue further, but that's all I really  
8 can say about it is that it is off the table, those  
9 talks have ended and there is no intention whatsoever  
10 of pursuing that.

11 Which turns us then to the second issue. I  
12 categorized it, described it as issues that have  
13 arisen in other states. I think that's a fair  
14 statement of what the Commission expressed concern  
15 with and they really fall into two categories. The  
16 first relates to trade practice investigations in  
17 Illinois and New York, and then the second relates to  
18 some litigation that's been filed involving Southern.

19 First let's talk about the trade practice  
20 investigations. It's very important to note as it  
21 relates to these trade practice charges, that these  
22 were not investigations of Southern Wine and Spirits  
23 as such. These were industrywide investigations that  
24 in some instances went back decades, many, many years  
25 before Southern was even doing business in the

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1 relevant states of Illinois and New York.

2        In both instances, both in Illinois and New  
3 York, Southern had actually been doing business in  
4 that state for a relatively short period of time when  
5 the investigation came to light. But in both  
6 instances the investigation looked at activity that  
7 had been going on a long time, activity that was  
8 certainly not appropriate and that Southern, when it  
9 learned about it, put an end to it and fully  
10 cooperated with both of those investigations.

11       In connection with both of those matters,  
12 there was never a judicial or quasi judicial finding  
13 of illegal trade practices on behalf of Southern or  
14 anyone else for that matter. But Southern did agree  
15 because it had acquired businesses, come into those  
16 jurisdictions, taken on businesses that had previously  
17 been involved and had continued to engage in some  
18 practices, Southern agreed to make -- to make a  
19 settlement and compromise in those two instances.  
20 That is absolutely a fair statement.

21       But I think what's most important about those  
22 trade practice issues is that they were industrywide  
23 investigations that long preceded any involvement by  
24 Southern in the respective jurisdictions and that  
25 Southern resolved them, cooperated and moved on. I

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1    would also point out, because I think it's relevant,



2 that those issues in those two states of Illinois and  
3 New York have not served as a basis for any of the  
4 other 27 states in which Southern does business to  
5 come back and take action against Southern, because  
6 Southern was involved in troubles in another state.

7 And I realize that Indiana is not one of  
8 those other 27 states, I recognize that, but I think  
9 it is worth mentioning that in those other states no  
10 commission that had the same kind of jurisdiction that  
11 this Commission would enjoy over Southern if Southern  
12 is fortunate enough to receive permits, took action  
13 against Southern because of what was alleged and what  
14 played out in Illinois and New York.

15 The other part of the -- this second issue,  
16 the issues in other states, relates to litigation.  
17 And it's been identified in the submission that there  
18 were a total of three lawsuits is what we're talking  
19 about, the Eber Brothers case in New York, the Charmer  
20 case in New York, and then a case that National was  
21 itself involved in with Southern in the State of  
22 Illinois.

23 As the Commission knows, Southern is the  
24 largest liquor distributor in the United States. We  
25 are going to submit today a map that includes

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1 Southern's footprint in the country. And I will show  
2 the Commission a somewhat larger version of it here.

3 This is a -- this is a map that shows Southern's  
4 footprint in the United States, the 29 states in which  
5 Southern does business.

6 It is inconceivable, virtually, that any  
7 company that is the largest in anything and that does  
8 business in some 60 percent of the states in the union  
9 would not get involved in some litigation from time to  
10 time. I guess I would submit to the Commission that  
11 the Commission members may have in their own minds the  
12 idea of who they think some of the good corporate  
13 citizens are in this country in whatever industry,  
14 whoever you think it is, whether it's General  
15 Electric, General Motors, Wal-Mart, whoever, I would  
16 respectfully submit that if you pick whichever company  
17 you think is a good corporate citizen you will find,  
18 if you do a search, that that company has been  
19 involved in a lot of litigation.

20 This is no secret to the lawyers in the room.  
21 Litigation is what happens in the business world and  
22 certainly when you are the largest in any industry  
23 you're going to attract some attention in that regard.  
24 So I don't say this to minimize the filing of the  
25 lawsuit, but only to say that the filing of a lawsuit

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1 is just one side of the story, it does not tell the  
2 full story, and that in and of itself is not

3 conclusive of anything.

4       In the three cases that have been raised,  
5 again a relatively minor and modest number I would  
6 submit to you for the largest liquor distributor in  
7 the United States, there's never been a judicial  
8 finding of wrongful trade practices or that kind of  
9 fraudulent activity. In the Eber Brothers case there  
10 was an allegation of wrongful solicitation of  
11 employees, much of that case got dismissed.

12       All of it didn't, and there was a ruling in  
13 that case that there was sufficient evidence for the  
14 case to proceed to trial because of the summary  
15 judgment standard the Chairman's well familiar with.  
16 And a preliminary ruling that says I as a judge cannot  
17 dispose of this entire case, but some of it may  
18 present issues for a jury. That is not a comment that  
19 one side or the other should win, it's merely a  
20 recognition that some issues go beyond the scope of  
21 the judge's authority. That case was ultimately  
22 resolved.

23       Again, that's what happens in many business  
24 disputes and litigation, matters get resolved. Courts  
25 are encouraged to promote settlement and encourage the

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1 parties to settlement without fearing that those  
2 parties are later going to have to apologize for the  
3 fact that they resolved a dispute. Settlements are a

4 good thing and they promote getting matters resolved  
5 without clogging the courts more than they're already  
6 clogged.

7 In the Charmer case, Southern was a secondary  
8 defendant in that case. The federal claims were all  
9 dismissed. What was left of the case essentially  
10 gutted it and what was left of it was then settled in  
11 compromise. And, finally, in the National case, what  
12 was essentially involved was an alleged raiding of  
13 employees and also some trade secrets claims. The  
14 trade secrets claims as I understand it were all  
15 dismissed.

16 But it was found that there had been by  
17 Southern a breach of contract. The defense that  
18 Southern raised was that it did not believe its  
19 contractual obligation was triggered, because it did  
20 not believe that there had been legal consideration  
21 for that obligation to attach. The court disagreed  
22 with Southern in that instance, that happens from time  
23 to time, and the court did find that there had been a  
24 breach of contract.

25 With all due respect, I do not believe that a

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1 finding of a breach of contract in another state would  
2 be sufficient grounds to preclude Southern Wine and  
3 Spirits from doing business in the State of Indiana.

4 I really don't think that rises to the level to

5 warrant that kind of decision.

6 The final category of concerns that the

7 Commission raised had to do with prohibitive

8 interests. I would say to this Commission that all of

9 Southern's responses were truthful. There's not a

10 single response that Southern ever made to this

11 Commission that was not truthful. And specifically

12 the interest in Shaw-Ross, the importing division, I

13 would refer this Commission to the excise report on

14 that point, which says quite clearly that that

15 interest is not a prohibited interest in the State of

16 Indiana.

17 And furthermore on this point, this

18 Commission enjoys -- again, if Southern is fortunate

19 enough to receive permits in the State of Indiana,

20 this Commission will enjoy continuing jurisdiction

21 over Southern, as it does all the other permittees in

22 the State of Indiana, just as Southern is subject to

23 the continuing jurisdiction in the 29 states where it

24 does business. And at any time this Commission

25 believed that there was an issue that warranted

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1 further attention or further inquiry, Southern would

2 be more than willing to come before this Commission to

3 respond to any valid inquiry about its business

4 interest or any of that.

5 I want to make it very clear that Southern  
6 does not shy away from scrutiny, Southern welcomes the  
7 opportunity, and in a moment Mr. Becker's going to  
8 speak to you some about Southern, welcomes the  
9 opportunity to talk to this Commission about its  
10 business and about how it does business in the 29  
11 states in this country where it is permitted. We  
12 don't shy from that.

13 We simply want to be treated the same as  
14 everyone else, and we want to receive the same  
15 advantages that our competitors receive when they are  
16 permitted to do business in the State of Indiana.  
17 With that, at this time I would like to turn it over  
18 to Mr. Becker, who I think would like to make some  
19 brief remarks to the Commission

20 MR. SNOW: Very well, thank you very much,  
21 sir.

22 Good morning, sir.

23 MR. BECKER: Good morning. As you just  
24 heard, my name is Steven Becker. I'm the Executive  
25 Vice President and Treasurer of Southern Wine and

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1 Spirits of America and Southern Wine and Spirits of  
2 Indiana. I want to thank you for the chance to make a  
3 few comments here this morning, and I'd like to take  
4 the opportunity to just talk for four or five minutes

5 about our company.

6 Southern Wine and Spirits is a family-owned  
7 business. It started 40 years ago as a distributor  
8 just in the city of Miami, Florida. And we have been  
9 fortunate that over the past 40 years, we are  
10 celebrating our 40th anniversary this year, we have  
11 grown to the largest distributor in the country, we're  
12 in 29 states. We operate as a licensed wholesaler in  
13 13 open states, as a licensed broker in 16 controlled  
14 states. On top of that, through our importing  
15 division, Shaw-Ross International Importers, we are  
16 licensed and do operate in all 50 states.

17 I'd like to take a few minutes, if you don't  
18 mind, to talk a little bit about our philosophy and  
19 our way of doing business, the way we operate in  
20 almost every state. Our philosophy, we think this is  
21 the thing that sets us apart from our competition, our  
22 philosophy is to have the most salespeople on the  
23 street, the best educated salespeople on the street,  
24 and the most people in the back office to deal with  
25 the customers and suppliers.

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1 We are very proud of the fact that we have  
2 grown to the point now where we have 10,000 employees  
3 nationwide, the majority in the 13 open states. And  
4 we're also very proud of the fact of these 10,000  
5 employees we have an incredible number that are 20, 25

6 year, 30, 35 year employees. As a matter of fact,  
7 this year we actually gave out two awards to people  
8 who, not owners, two just regular employees, who have  
9 been with us for 40 years, from the very beginning,  
10 we're very proud of that.

11 We're also very proud of the fact that by  
12 having more people on the street, more people in the  
13 back office we have created many new jobs in all the  
14 communities we serve, and we take that responsibility  
15 very seriously. Another responsibility we take very  
16 seriously is the fact that being the largest you are  
17 probably the most visible. And we believe it's  
18 important on every member of the industry, but  
19 probably more incumbent on us being the largest, to be  
20 a good corporate citizen, and we take that  
21 responsibility very seriously.

22 We believe alcohol is a special product,  
23 deserves special regulation, and we are very strong  
24 supporters of a very strict retail system. We take  
25 social responsibility efforts very strongly as well.

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17

1 We participate in numerous social responsibility  
2 efforts in all the states we do business, both in  
3 conjunction with our competitors, with other industry  
4 members and some by ourselves as well. One -- I'm  
5 just going to give you one example, one thing that we



6 just kicked off in south Florida, called SoBe Sober,  
7 SoBe refers to South Beach. It's an initiative to  
8 prevent underage drinking during spring break.  
9 And we do this in conjunction with the  
10 schools, as well as the retailers, bars and clubs,  
11 educate them to make sure no underage drinking -- to  
12 restrict underage drinking as much as possible. We do  
13 similar things in many other states as well like I  
14 said.  
15 We have a strong legal compliance program in  
16 every state we operate. We give all our salespeople  
17 and many operating people as well annual seminars,  
18 annual updates on compliance. And we take our  
19 regulatory aspect very seriously, we have a zero  
20 tolerance policy for breaches of compliance matters.  
21 I think if you would go around and speak to  
22 the regulators in the other 29 states that we do  
23 business you would get a very good response as to how  
24 they view, what they think about Southern Wine and  
25 Spirits. Even in New York and Illinois I think you

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1 would get very good responses from those regulators.  
2 One thing that we do, part of our philosophy  
3 and something else that we're very proud of is that we  
4 try to benefit the retailers and the consumers in very  
5 creative ways in all the markets that we serve. Some  
6 examples, and I'm trying not to bore you with all

7 these examples, but some things that we do that are  
8 very different than our competitors, we put on a lot  
9 of wine and food festivals.

10 In Florida we put on the South Beach Wine and  
11 Food Festival, which has grown to be the largest wine  
12 and food festival in the country, surpassed Aspen in  
13 significance. We put on the New York Wine and Food  
14 Festival, Chicago Gourmet, and in Nevada something  
15 called UNLVino, UNLV, I'm sorry. We do similar  
16 programs in almost every state, but these are the more  
17 significant ones.

18 Each one of these wine tastings, outside of  
19 being really interesting events for our consumers as  
20 well as for our customers, they're all nonprofit  
21 events. Southern absorbs the cost of putting on the  
22 event, but all the proceeds go to charity. For  
23 instance, the South Beach Wine and Food Festival, a  
24 hundred percent of the proceeds go to Florida National  
25 University. UNLVino obviously is to benefit the

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1 University of Nevada-Las Vegas. And, likewise, every  
2 other food and wine festival benefits a certain  
3 specified charity in the community.

4 I mentioned earlier that we're proud of the  
5 fact that our salespeople, we believe, are the most  
6 knowledgeable salespeople in the market. Outside of

7 putting the most salespeople on the street something  
8 else that we do, we created a program called SWS,  
9 Southern Wine and Spirits, University. It's a  
10 training program that all our salespeople are required  
11 to complete before they can go out and call on a  
12 customer. This curriculum encompasses product  
13 knowledge, selling skills and beverage law training.  
14 They have to complete this satisfactorily before they  
15 go out to call on a customer.

16       Something else we do that we believe not many  
17 other people in the industry do to help our retail  
18 customers is we have numerous mixologists. I suppose  
19 everyone knows what a mixologist is now, it's very big  
20 now in the art of cocktail making. And some liaison  
21 staff that work with all our salespeople nationwide to  
22 help the retailers develop special drinks to serve or  
23 to develop the best wine list possible for them.

24       We have actually as far as sommeliers, we  
25 have master sommeliers. I don't know if you know

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1 this, but there's only 130 master sommeliers who  
2 achieve that credential in the world, we have 10 on  
3 staff at Southern Wine and Spirits. We have more  
4 master sommeliers than any other company in any area  
5 of the industry, so we're pretty proud of that fact  
6 also.

7       The point I'm trying to make, I think, is

8 that we reinvest in business in order to serve the  
9 communities that we do business in to the best  
10 possible way. We try to benefit the retailers, the  
11 consumers in the state. I think if you ask around,  
12 like I said, to people in different states you'll find  
13 that, hopefully, most people think pretty highly of  
14 our company. We try to be good corporate citizens,  
15 very charitable.

16 And I want to thank you for the opportunity  
17 to give you a little five-minute commercial about our  
18 company, thank you very much. But more importantly I  
19 hope you have learned a little bit more about Southern  
20 Wine and Spirits.

21 MR. SNOW: Does the commission have any  
22 questions of this gentleman?

23 MR. STURTZ: Well -- no.

24 MR. GUTHRIE: You almost dodged the bullet.  
25 And it may not be for you, it may be for somebody

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1 else. Your written response responds to this. I'm  
2 interested in your plan if we approve your licenses.  
3 Now, the written response made it pretty clear that we  
4 can't ask you for a date when you're going to operate.  
5 But can you give us an idea of 90 days, 180 days, a  
6 year? What -- what is your plan about operating in  
7 Indiana and whether you're going to stick with the

8 warehouse you've got or you're going to do other

9 things or --

10 MR. BECKER: We would begin operations as

11 soon as we feasibly could. We would probably stick

12 with the warehouse we have got right now until we

13 outgrow it, which, hopefully, would be very quickly.

14 But we would immediately start to scale up to become a

15 full-size wholesaler.

16 Let me try and answer that question by giving

17 you an example of what we did in New York. Because

18 when we got to New York in 2004, we got in there by an

19 acquisition, we bought the smallest wholesaler in the

20 state, they really weren't a statewide wholesaler. In

21 order to attract suppliers, especially major

22 suppliers, you have to be a statewide full-service

23 wholesaler. We weren't in the very beginning.

24 We bought the company in December, 2004, went

25 out to all the major suppliers, tried to attract them

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1 to come to Southern Wine and Spirits. They said until

2 you're a full-service, statewide wholesaler you're not

3 going to get our business. We promised them that in

4 four months, by March of 2005, we would be a

5 full-service, statewide wholesaler. That means

6 facilities around the state, trucks, salespeople, well

7 over a thousand people were hired within the first

8 four months.

9       On our say-so two major suppliers committed  
10 that they would come to us in March. By March we were  
11 up and running with all the facilities and all the  
12 trucks. That's our -- that's our hope, that we would  
13 be able to be a full-service, statewide wholesaler in  
14 Indiana in four to six months with more facilities,  
15 trucks, salespeople, clerks, other internal people,  
16 full operation. We have done it in the past and  
17 that's the goal as well in the State of Indiana.

18       MR. GUTHRIE: Okay, thank you, that answers  
19 my question.

20       MR. SNOW: Thank you very kindly, sir.

21       MR. BECKER: Thank you.

22       MR. LEET: Mr. Chairman, all I would add is  
23 more in the way of housekeeping issues.

24       MR. SNOW: Certainly.

25       MR. LEET: We want to submit to the

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1 Commission the signed versions of the attachments to  
2 our submission. You may have noticed there were --

3       MR. SNOW: Yes.

4       MR. LEET: -- various memos from individuals.

5       MR. SNOW: Yes.

6       MR. LEET: We have signed versions of those  
7 that we will tender to the court reporter for the  
8 Commission. And we will also tender a smaller, more

9 manageable map of the Southern footprint in the  
10 country.

11 MR. SNOW: Okay.

12 MR. LEET: Other than that, I understand from  
13 the Chairman's comments a few minutes ago that the  
14 Commission plans a vote on Thursday afternoon. We  
15 would like for the -- what we hope will be for the  
16 benefit of the Commission to submit proposed findings  
17 and conclusions. We will commit to do that tomorrow  
18 just so the Commission can see what we would suggest  
19 that the proposed findings --

20 MR. SNOW: You should feel free to do that.

21 MR. LEET: -- and conclusions will look like,  
22 we will submit those tomorrow. Otherwise, I thank you  
23 again for your time. It is -- it is no secret that  
24 this matter has taken a lot of it, we appreciate your  
25 time and we appreciate your attention. Thank you very

□

24

1 much.

2 MR. JOHNSON: Can I ask a question?

3 MR. SNOW: Certainly. We have a question  
4 from Mr. Johnson.

5 MR. JOHNSON: I thought the question might be  
6 more appropriate for Mr. Leet, that's why I didn't say  
7 anything a moment ago. I'm not going to dwell on  
8 this, Mr. Leet, I appreciate your -- your expression  
9 to us about the joint venture matter being off the

10 table, and no agreements reached and it's no longer an  
11 issue. And I don't have any problem accepting that  
12 statement, and -- and your explanation that there is  
13 no business relationship of any kind between Southern  
14 and Glazer at this point in time.

15 MR. LEET: Yes, sir.

16 MR. JOHNSON: It goes just a little bit  
17 further than that in my opinion, personally. With all  
18 that developed over the weeks and months following the  
19 announcement of that joint venture, whatever that  
20 might have been, there seemed to be a lot of  
21 hesitation from Southern to reveal or explain this  
22 venture. It's gone away now, but we still don't have  
23 an explanation of what that venture was going to be or  
24 what it was ever planned to be. There was a lot of  
25 just jumping around the issue.

□

25

1 The question, unfortunately, that may have  
2 been created out of all of that, it involves a  
3 discomfort, maybe on my part as one commissioner,  
4 maybe even goes so far as distressed, because you  
5 weren't more forthcoming about that information. You  
6 made us dig, you made us challenge you, and we still  
7 don't know what it was all about. My question is why  
8 did you handle it that way?

9 Why didn't you just tell us even though you



10 didn't have an agreement what you were looking for out  
11 of the relationship and what you think Glazer was  
12 looking for out of the relationship. And if it was  
13 something that was not appropriate it could have been  
14 discussed, could have been dealt with.

15 MR. LEET: Well, let me -- let me do the best  
16 I can to answer that. And Mr. Becker may want to  
17 supplement my response, but I'll give you the response  
18 from my perspective. From my perspective what we  
19 understood from our client was that there were  
20 discussions with Glazer's, there was never any  
21 definitive agreement. And, frankly, I don't think we  
22 ever adequately appreciated how much concern this was  
23 apparently raising with you and perhaps other members  
24 of the Commission.

25 I think you would find if you talked to

□

26

1 people in this industry that there are quite often  
2 discussions, preliminary discussions, among  
3 competitors, among people at different levels about  
4 potential business enterprises that the two might  
5 enter into. The vast majority of those don't turn  
6 into anything. There are discussions, people talk,  
7 they have negotiations, but they don't come to pass.

8 There are huge regulatory clearances, there  
9 are hurdles, and I don't think -- I would -- I guess  
10 I'll take some of the responsibility for this on -- on

11 myself and on us as lawyers. I don't think we  
12 adequately appreciated that this was apparently --  
13 because I take your concerns at face value and as  
14 sincere concerns, I don't think we ever appreciated  
15 that that was as big an issue as it apparently was.  
16 Because they were just discussions, there was never  
17 any definitive agreement. There were a whole host of  
18 hurdles that could come up that would prevent it from  
19 -- from going forward.  
20 And, of course, those discussions were always  
21 subject to confidentiality as between the two  
22 commercial enterprises, Southern and Glazer's. So I  
23 think with the benefit of hindsight, if only we had  
24 all known how big an issue this was for you and  
25 perhaps for others, we should have been more

□

27

1 forthcoming. All I can tell you is it wasn't because  
2 of any desire to hide it from you. For heaven sakes  
3 we couldn't hide it, everyone was talking about it, it  
4 was included in the written submissions. It was  
5 merely, I think, maybe on our part a lack of  
6 appreciation for the kind of -- kind of hurdle that  
7 represented.

8 That -- as a lawyer that's what I would say,  
9 but perhaps Mr. Becker would add more to it. But I --  
10 but I would also go ahead to the -- to the further

11 point and say that -- that whatever obstacle that  
12 presented, thankfully, I suppose, that's over with,  
13 those talks fell through as they often do in this kind  
14 of setting in this context, and there's no -- there's  
15 no further discussions planned. I can't say that  
16 strongly enough.

17 MR. BECKER: I would like to --

18 MR. LEET: Sure.

19 MR. SNOW: Sure, come forward if you will,  
20 sir. Thank you. We want to make sure we pick up  
21 everything you're saying.

22 MR. BECKER: Thank you. Yeah, I would like  
23 to address that question, because I think a large part  
24 of the reason that a lot of details weren't  
25 forthcoming is because there weren't a lot of details

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1 to be forthcoming. When we first went into this  
2 strategic joint venture with Glazer's and announced  
3 it, we did it because strategically it made a lot of  
4 sense. It made a lot of sense for Southern, it made a  
5 lot of sense for Glazer's. If you look at our  
6 footprint and Glazer's footprint, it's right here.  
7 Strategically it just made a lot of sense, fill in a  
8 major gap of Southern Wine and Spirits.  
9 Our suppliers thought it was fantastic. They  
10 actually talked to us pretty regularly about trying to  
11 do something along those lines. It just made so much

12 sense that we went into discussions with them with no  
13 clear game plan, we just wanted to come to some kind  
14 of joint venture. That's why the announcement was  
15 called a joint venture.

16 But, to be honest, during the year or more  
17 than a year we were in discussions with them the  
18 transaction morphed I can't tell you how many times  
19 from a joint venture, to an outright acquisition, to a  
20 merger, to a limited merger, lots of different things  
21 were discussed. Nothing was ever finalized, no real  
22 structure was ever agreed upon. And in the end the  
23 complexity of the deal and the regulatory restrictions  
24 of the deal made it too difficult to proceed and we  
25 agreed to walk away.

□

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1 But that's the reason there were no details  
2 released, because most of the discussions, we had no  
3 idea what was going on ourselves, just trying to make  
4 something work, because strategically it just made  
5 sense.

6 MR. JOHNSON: Well, I'll just add this one  
7 more thing. I ask that question because it's a little  
8 broader than that and it goes a little further than  
9 that. If you become a permittee for the State of  
10 Indiana, for enforcement purposes, monitoring  
11 purposes, we have to feel like we're getting full

12 disclosure --

13 MR. BECKER: I understand.

14 MR. JOHNSON: -- in any question that we may

15 ask of your operations if we think it affects your

16 ability to hold a permit in the State of Indiana.

17 MR. BECKER: I understand.

18 MR. JOHNSON: If we can't feel like that

19 we're getting that cooperation from Southern, then

20 we're always going to be in a mode of trying to second

21 guess you. We don't want to be in that mode, I don't

22 want to be in that mode.

23 MR. BECKER: I wouldn't want you to be in

24 that mode either. And I apologize and I want to

25 restate what was just said, maybe we didn't realize

□

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1 the importance to you guys, but, again, there was

2 really nothing we could say. And I think the

3 confidentiality provisions we were under really

4 restricted us from laying out some of the details we

5 were discussing at the time.

6 That's not an excuse, but I understand that

7 we have to be very forthcoming. We try to be very

8 forthcoming in every state we do business. I

9 understand your point. The only other point I'd like

10 to make is if you ask around to regulators in all the

11 other 29 states we do business, I think they would all

12 say that we are very forthcoming, we have good

13 relationships with the regulators, we take our

14 responsibility very seriously.

15 MR. JOHNSON: Well, maybe we just got off to

16 a bad start.

17 MR. STURTZ: We're not going to ask you for

18 the secrets of the neutron bomb or anything, we just

19 wanted some information.

20 MR. JOHNSON: Thank you, sir.

21 MR. SNOW: Thank you very kindly, sir. I

22 think that concludes Southern's remarks. It's now --

23 everybody done? Okay, now we're open for public

24 comment. We're changing a tape, okay.

25 Sir, you are for record purposes?

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1 MR. BADGER: Steve Badger, Bose, McKinney and

2 Evans, representing National Wine and Spirits.

3 MR. SNOW: And we have -- we have, Mr.

4 Badger, read your document, I want you to know that,

5 okay?

6 MR. BADGER: And I will endeavor to be brief,

7 Your Honor.

8 MR. SNOW: You're reading -- we're

9 channelling now.

10 MR. BADGER: And I'm not going to address the

11 constitutional issues that have been raised in the

12 written submissions, there's nothing really new there.

13 The Commission's already rejected those arguments and

14 there's no reason to go back through those. And

15 correctly rejected those arguments.

16 I do want to address the claim in Southern's

17 written submission where they state that the

18 Commission, and I quote, simply recited objections

19 raised by Southern's competitor. Well, that's both

20 unfair and untrue. Among other things that flat out

21 ignores the very thorough, detailed investigation, and

22 the time and effort this Commission's put into this

23 matter.

24 The Indiana Excise Police performed an

25 exhaustive and independent investigation and presented

□

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1 a detailed report to you with their findings. The

2 Commission's held multiple hearings in this matter and

3 has given Southern repeated opportunities to explain

4 why its applications should be granted. After all

5 that, Southern to accuse the Commission of having

6 simply adopted National's objections is astounding and

7 is simply not the case.

8 Southern's improper, inappropriate conduct in

9 other states is a matter of public record. And that's

10 a recognized source of information that this

11 Commission can draw upon. We cited in our papers to

12 the Administrative Code, Section 1271, which refers to

13 information in public record evidencing court

14 proceedings as material that the Commission may rely  
15 upon in determining whether an applicant is of good  
16 moral character, and which is a very critical issue  
17 here.

18       The Commission was correct in its proposed  
19 action in viewing Southern's misconduct in Illinois  
20 and New York as part of a pattern. Again, these are  
21 not just isolated incidents. And contrary to what --  
22 I take issue with the way Mr. Leet described the  
23 litigation. This is not just any litigation, it's the  
24 type of litigation that has a market impact. Southern  
25 has a singular, as opposed to other wholesalers,

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1 dubious distinction of being caught in similar illicit  
2 trade practices in both New York and Illinois, and  
3 being the subject of court decisions finding evidence  
4 that Southern committed intentional torts when it  
5 hired away en masse the sales staff of its  
6 competitors.

7       They can argue about semantics, but the  
8 decisions speak for themselves, and this Commission  
9 correctly reflected those in its -- in its findings  
10 and its proposed action. The New York court, in fact,  
11 expressed in the Eber Brothers case, commented about  
12 the momentous events in a short period of time.  
13 Southern eventually bought out Eber Brothers and that



14 case was dropped, but it is evidence in the record and  
15 evidence that the court found existed of fair  
16 characterization of raiding employees, of hiring away  
17 employees en masse.

18 In Illinois, you have the exact same type of  
19 conduct. Mr. Leet said that was just a breach of  
20 contract. Well, that's not -- look at the opinion,  
21 that's not quite right. The -- there was also a  
22 claim, again it's an intentional tort, of civil  
23 conspiracy, which the court found there was evidence  
24 to support that claim, to get it over the summary  
25 judgment hurdle. And what that conspiracy involved

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1 was working with insiders at the company in order to  
2 facilitate this mass -- orchestrate this mass exodus  
3 of employees.

4 MR. SNOW: It's rather easy to get over that  
5 summary judgment hurdle most of the time, though,  
6 right, as a practitioner? You don't see judges right  
7 and left granting summary judgments, do you? I used  
8 to call it a lethal weapon, that's why -- you know,  
9 judges are prone to want to hear cases on merit.

10 MR. BADGER: There has to be evidence,  
11 though, there has to be admissible evidence --

12 MR. SNOW: Some evidence, yeah.

13 MR. BADGER: -- fit to overcome those hurdles.

14 And, again, I refer back to the opinions. The facts

15 that were presented there were pretty extraordinary  
16 about how this -- this conduct and how it impacted the  
17 competition and orchestrating -- and, again, it's the  
18 same pattern of attempting buyout negotiations, those  
19 fail, and then undertaking this conduct.

20 Southern also tries to create the  
21 misimpression that when it entered Illinois, that it  
22 found improper trade practices and sought to clean  
23 them up, that's not the case. We have with us today,  
24 we have submitted his affidavit, we thought it would  
25 be best if you heard from Mr. Stoltz directly. He was

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1 involved in some efforts, industry efforts, for a  
2 number of years to try to address these practices and  
3 he would like to talk with you about that, so --

4 MR. SNOW: Would you identify yourself,  
5 please.

6 MR. STOLTZ: Good morning, I'm Mitch Stoltz.  
7 I was the hands-on manager, president of the company  
8 for National Wine and Spirits that managed the  
9 Illinois operations of Union Beverage and Hamburg  
10 Distributing. I actually worked in Illinois from '92  
11 to 2001, and I was president of the company from 1995  
12 to 2001, so I was there.

13 And the reason that I asked to participate  
14 today is because the idea that the trade practice

15 violations in Illinois were industrywide and their

16 response to that. A, they were not industrywide, and,

17 B, I don't agree with the response and I wanted to

18 give you some history.

19 When I went to Chicago to manage the company

20 in 1995, it was a very specific part of our strategy

21 to create a wholesale association. There was one in

22 place, but it did not operate. Everybody was on their

23 own, a lot of the distrust kind of problem existed,

24 and we felt that in order to make a business

25 productive, profitable in Illinois a strong wholesale

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1 association was a part of that strategy, philosophy.

2 And we worked with the other companies to do

3 a number of activities, fundraising, PAC work, charity

4 events, lobbying, we did joint multi employer, union

5 negotiations, but as it applies to this, we

6 specifically targeted trade practice policy and

7 adherence. In 1996, the governor appointed a new

8 executive director, Arabel Rozales. And the

9 association at that time, and we were only in the

10 second year, we started -- we took the lead in '95 and

11 then '96, we had just gotten started, one project at a

12 time, but the association went to the new executive

13 director and said trade practices is a priority.

14 Chicago has been known for a long time to be

15 a difficult market. And you could even stretch

16 difficult to go as far as corrupt. And we're tired of  
17 it and we want to change it, but we can't, you know,  
18 the wholesaler's in the middle. You have the supplier  
19 and retailers, and we need the state to step up and  
20 take the lead and they did.

21 And, in fact, this is one of the ironies of  
22 ironies. It was in 1996, we helped pass a trade  
23 practice bill that allowed Arabel, it was kind of sort  
24 of her coming-out party, that says business is no  
25 longer going to continue just as it always has been,

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1 that we're going to move ahead.

2 From 1995 through 2001, with the help of the  
3 state, the executive director at the liquor control  
4 commission, a new executive director for the wholesale  
5 association, and the wholesalers themselves, we  
6 cleaned up significantly. And I can give you a list  
7 of one project at a time of things that had been  
8 ignored and -- and mismanaged in Illinois for a long,  
9 long time. And it was a tedious, tough project,  
10 because, again, you had retailers fighting us and you  
11 had suppliers. And we were proud of what we  
12 accomplished and this was a group effort.

13 In 2001, I retired. I think most people  
14 would say semi-retired, but I retired. But I stayed  
15 on as a consultant with National slash Union, and one

16 of my primary jobs going forward was to continue to  
17 work with the wholesaler association. Again, that was  
18 union labor relations, charity events, lobbying, trade  
19 practices.  
20 2002, 2003, during the course of this  
21 continued work with the association it became very  
22 obvious not just to me, but to the group in total, the  
23 Romano Brothers, Pacific, Judgendoff and ourselves,  
24 and Pacific and Romano ended up being bought out by  
25 Southern, but it became very obvious that the

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1 deterioration of -- of the work we had done was in  
2 effect. The trust level wasn't there and that a lot  
3 of what Southern brought to the market, and part of  
4 that was through the people they hired from the  
5 companies that existed, it was going to go back to  
6 business as it had been.  
7 So when they say they came in and found in  
8 '04 trade practices and that they started to clean  
9 them up, I don't happen to agree, that isn't the way  
10 history was being written at the time. So that as  
11 much as anything is why they asked -- why I asked and  
12 they allowed me to participate, because we put a lot  
13 of time and effort in a whole different scenario than  
14 what was outlined in those answers. Thank you.  
15 MR. BADGER: If the Commission would like  
16 further information, there are others who can set the

17 record straight on Southern's role in Illinois and the  
18 deterioration of that market. The point is that  
19 Southern's depiction of itself as a catalyst for  
20 change is upside down. Yeah, they were a catalyst for  
21 change, but a catalyst for making things worse.  
22       The lack of good character of Southern is  
23 also evident from the conduct in these proceedings and  
24 its lack of candor with the Commission. I'll just  
25 touch on a couple of examples we cite in our papers,

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1 in fact, going back to the TTB investigation in  
2 Illinois, Southern's discovery responses or responses  
3 to the excise officer's inquiries was that that was  
4 pending. Well, in fact, as the excise officers  
5 learned, they had entered -- Southern and Shaw-Ross  
6 had both entered into offers of compromise more than a  
7 year earlier.

8       The joint venture is another example of  
9 Southern's lack of candor with the Commission.  
10 Southern failed to disclose its relationship with  
11 another Indiana permittee, Glazer's Olinger. They now  
12 try -- Southern now tries to take refuge in a  
13 confidentiality provision Mr. Leet mentioned. But  
14 such contractual terms as a matter of law do not  
15 excuse the failure to make its disclosures to a  
16 regulatory body such as this Commission. I won't

17 repeat them, but we cite cases to that effect in our  
18 written submission for the lawyers in the room. So  
19 this is just another evasion to add to Southern's list  
20 in these proceedings.

21 The other excuse that's brought forward to  
22 the Commission today is that, well, they were only  
23 preliminary discussions. Well, it went well beyond  
24 that stage. Preliminary discussions are not -- they  
25 issued a press release, they discussed it in -- their

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1 executives discussed the joint venture in the media  
2 and press interviews, provided a lot of information to  
3 the media that was never brought forward to the  
4 Commission in any way, shape or form. They made --  
5 Southern, I do believe they made presentations to  
6 suppliers. The only reason, we remind the Commission,  
7 the only reason the joint venture was a big issue was  
8 because National brought it forward, brought it to  
9 your attention. It was never disclosed by Southern in  
10 any way, shape or form.

11 Let me make one last point, then I'll sit  
12 down. To put this in perspective, Indiana has tough  
13 price -- antidiscrimination laws with respect to  
14 price. It allows coops among small retailers that  
15 attempt to even the playing field with the big box  
16 stores. The Indiana system relies on  
17 self-enforcement. And you as regulators have to be

18 able to rely on wholesalers' voluntary compliance with

19 these types of rules.

20 Because when there's a violation, you're

21 dealing with a large wholesaler, has 40, 50 percent of

22 the market, there's a violation, revoking -- the

23 threat to revoke a permit is not a -- it's not really

24 a very good threat, because there's lots of -- if you

25 do that there's a lot of third parties who are going

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1 to be -- lose their source of supply and they're going

2 to be affected, who are completely innocent.

3 So you have at your disposal a fine. And for

4 a large company like Southern, they pay a fine and go

5 on, which is what they have done and what their

6 history shows. So character is everything. And, in

7 short, the Commission exercised its discretion wisely

8 in its proposed action to deny the licenses, and I

9 appreciate your time.

10 MR. SNOW: Thank you very kindly. Yes, sir.

11 MR. LEET: I realize the Commission has been

12 patient, would the Commission permit us to respond, to

13 react to that?

14 MR. SNOW: Ever so briefly. Identify

15 yourself again for the record, sir. And it seems fair

16 to me you should be allowed to do that.

17 MR. BECKER: Thank you very much. Steven



18 Becker, again, Executive Vice President of Southern

19 Wine and Spirits.

20 MR. SNOW: Very well.

21 MR. BECKER: I feel compelled to make a few

22 very quick comments about the comments you just heard.

23 Let's talk about the Illinois investigation in

24 particular. The allegation is made that the market

25 started to deteriorate again in 2002, when Southern

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1 entered the market. But, actually, the investigation

2 in Illinois was a very specific investigation into

3 activities that occurred with one retailer, Sam's, for

4 a very long period of time. And the investigation,

5 obviously, encompassed every wholesaler, as well as

6 many suppliers. And it's not -- it's not -- I'm

7 trying to emphasize the fact it's not as was laid out

8 just a few minutes ago.

9 This was not evidence of significant changes

10 in the marketplace in the way of doing business once

11 Southern entered the market. This was something that

12 had been going on for many, many, many years with

13 every wholesaler in the market that we were unaware of

14 when we made the acquisition in Illinois. Every

15 wholesaler and many suppliers were brought into the

16 investigation as well. So I wanted to point that out.

17 I'd also like to point out that National Wine and

18 Spirits was fined in that investigation as well.

19 As far as the subsequent comments about us  
20 not being forthcoming with the joint venture, there  
21 was reference to contractual obligations. I just want  
22 to emphasize there was never a joint venture with  
23 Glazer's, no contracts were ever signed, no papers  
24 were signed, it was merely discussions.

25 MR. SNOW: Thank you very kindly.

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1 MR. BECKER: Thank you.

2 MR. SNOW: Do we have another public comment  
3 somewhere? Yes, sir. Come forward and identify  
4 yourself for the record.

5 MR. PURUCKER: Yes. Mr. Chairman, members of  
6 the Commission, my name is Jim Purucker, I'm speaking  
7 today on behalf of the wine and spirit distributors of  
8 Indiana. And very briefly I just want to urge your  
9 caution in this matter. The -- take into  
10 consideration the amount of information you have given  
11 -- been given and by the -- you know, the lack of  
12 candor that's been discussed.

13 We already have tremendous problems with  
14 suppliers dealing directly with retailers, you know,  
15 Bentonville and other places around the country where  
16 -- that are really outside of the reach of the  
17 Commission, and the -- I think that would just be  
18 exasperated greatly by having Southern come in and

19 dealing directly with -- with large retailers like

20 that. And it would -- there would be deals that

21 wouldn't be offered to other retailers.

22 I think it would be a tremendous opportunity

23 for real problems that would be outside of your

24 purview and would be very difficult for you to get,

25 particularly with the evidence of what you have seen

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1 over the last year, year and a half of the candor

2 regarding this permit. So I just urge you to have

3 tremendous caution with regard to this and wish you

4 well on your deliberations. I'd be glad to answer any

5 questions if I could.

6 MR. SNOW: Appreciate your thoughts.

7 MR. PURUCKER: Thank you.

8 MR. SNOW: At long last we are finished with

9 this evidentiary portion of these proceedings.

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1 STATE OF INDIANA )

2 ) SS:

3 COUNTY OF SCOTT )

4

5 I, TAMARA S. DUVALL, a Notary Public within

6 and for the State at Large, my commission as such

7 expiring on June 24, 2016, do hereby certify that the

8 foregoing hearing was taken before me at the time and

9 place and for the purpose in the caption stated; that

10 the hearing was reduced by me to shorthand writing and

11 transcribed by me with the aid of a computer; that the

12 foregoing is a full, true and correct transcript of

13 the said hearing so given; that the appearances were

14 as stated in the caption; and that I am not associated

15 with counsel nor interested in the outcome of this

16 litigation.

17 WITNESS my hand this the 11th day of

18 November, 2009.

19

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TAMARA S. DUVALL, CCR, RPR  
Notary Public, State at Large

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